

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CURTIS E. DAVIS, Trustee U/W/A)	
DATED JULY 15, 1997, and)	
REBA M. DAVIS, his wife,)	
)	
Petitioners/Plaintiffs,)	
)	
v.)	CASE NO. 1:16-cv-02755
)	
LARRY AUSTIN, ELLEN FRIEND,)	
HELEN AUSTIN RYAN, RAYMOND)	
AUSTIN, heirs of Otella Austin, VIRGIL)	
W. DAVIS, RODNEY HUBBARD, d/b/a)	
RODNEY HUBBARD & SON LOGGING,)	
UNITED STATES OF AMERICA)	
DEPARTMENT OF TREASURY,)	
INTERNAL REVENUE SERVICE, and)	
EQUABLE ASCENT FINANCIAL,)	
)	
Respondents/Defendants.)	

ANSWER TO AMENDED PETITION AND COMPLAINT

COME NOW the Respondents/Defendants, Ellen Friend and Helen Austin Ryan, heirs of Otella Austin, and Rodney Hubbard, d/b/a Rodney Hubbard & Son Logging, and for their Answer to the Petitioners/Plaintiffs' Amended Petition and Complaint state as follows:

1. The said Respondents/Defendants admit the allegations contained in paragraph I of the Amended Petition and Complaint.
2. The said Respondents/Defendants admit the allegations contained in paragraph II of the Amended Petition and Complaint.

3. The said Respondents/Defendants admit in part and deny in part the allegations contained in paragraph III of the Amended Petition and Complaint. Mary Frances Davis was not the mother of Curtis E. Davis and Virgil W. Davis.

4. The said Respondents/Defendants deny the allegations contained in paragraph IV of the Amended Petition and Complaint and demand strict proof thereof. One or more of the heirs of Otella Austin negotiated with Virgil Davis and Curtis Davis, individually, to acquire his one-fourth interest. Virgil Davis and Curtis Davis agreed to convey their interest in the property for the sum of Thirty Thousand and No/100 Dollars (\$30,000.00) each.

5. The said Respondents/Defendants admit in part and deny in part the allegations contained in paragraph V of the Amended Petition and Complaint. Curtis Davis received and negotiated the sum of Thirty Thousand and No/100 Dollars (\$30,000.00) for his interest in the property. The other allegations contained in paragraph V are denied, and the Respondents/Defendants demand strict proof thereof.

6. The said Respondents/Defendants deny the allegations contained in paragraph VI of the Amended Petition and Complaint insofar as they allege logging operations are ongoing.

7. The said Respondents/Defendants deny the allegations contained in paragraph VII of the Amended Petition and Complaint and demand strict proof thereof.

8. The said Respondents/Defendants deny the allegations contained in paragraph VIII of the Amended Petition and Complaint and demand strict proof thereof.

9. Paragraph IX of the Amended Petition and Complaint require no response from the Respondents/Defendants.

10. The said Respondents/Defendants admit the allegations contained in paragraph X of the Amended Petition and Complaint.

11. The said Respondents/Defendants admit the allegations contained in paragraph XI of the Amended Petition and Complaint.

12. The said Respondents/Defendants admit the allegations contained in paragraph XII of the Amended Petition and Complaint.

13. The said Respondents/Defendants admit the allegations contained in paragraph XII of the Amended Petition and Complaint.

14. The said Respondents/Defendants admit the allegations contained in paragraph XIV of the Amended Petition and Complaint.

15. The said Respondents/Defendants admit the allegations contained in paragraph XV of the Amended Petition and Complaint.

16. The said Respondents/Defendants admit the allegations contained in paragraph XVI of the Amended Petition and Complaint.

17. The said Respondents/Defendants admit the allegations contained in paragraph XVII of the Amended Petition and Complaint.

18. Paragraph XVIII of the Amended Petition and Complaint require no response from the Respondents/Defendants.

19. The said Respondents/Defendants admit the allegations contained in paragraph XIX of the Amended Petition and Complaint.

20. The said Respondents/Defendants admit the allegations contained in paragraph XX of the Amended Petition and Complaint.

21. The said Respondents/Defendants deny the allegations contained in paragraph XXI of the Amended Petition and Complaint. The Helen A. Ryan listed as a Defendant in Mercer County Magistrate Court Civil Action No. 11-C-1675 is a Helen A. Ryan who resides in Princeton, West Virginia, and is not the same Helen Austin Ryan as mentioned in the Amended Petition and Complaint.

22. The said Respondents/Defendants admit the allegations contained in paragraph XXII of the Amended Petition and Complaint.

23. Paragraph XXIII of the Amended Petition and Complaint requires no response from the Respondents/Defendants.

24. Paragraph XXIV of the Amended Petition and Complaint requires no response from the Respondents/Defendants.

25. The said Respondents/Defendants admit the allegations contained in paragraph XXV of the Amended Petition and Complaint.

DEFENSES

I.

The Amended Petition and Complaint fails to state a claim upon which relief can be granted.

II.

The Petitioner/Plaintiff and his predecessor-in-title, Curtis E. Davis, have received an accord and satisfaction of all claims to this property by virtue of the acceptance of the sum of Thirty Thousand and No/100 Dollars (\$30,000.00) in 1999 for the interest of

Curtis E. Davis or the interest of the Petitioner/Plaintiff Curtis E. Davis, Trustee of the subject property.

III.

These Respondents/Defendants reserve the right to file additional defenses as the evidence becomes available.

WHEREFORE, the answering Respondents/Defendants pray that the Amended Petition and Complaint against them be dismissed and that they have their costs, including their reasonable attorney's fees; in addition, the answering Respondents/Defendants pray that the Court compel the Petitioner/Plaintiff Curtis E. Davis to convey his interest to the Respondents/Defendants pursuant to the 1999 agreement and the funds received by said Petitioner/Plaintiff for his interest in this property; alternatively, these Respondents/Defendants pray that the Court compel a partition of the property and that the consideration due the Petitioners/Plaintiffs, if any, be ascertained by the Court; that these Respondents/Defendants have their costs, including attorney's fees; and for such further relief as the Court finds appropriate.

ELLEN FRIEND and HELEN AUSTIN RYAN,
heirs of Otella Austin, and RODNEY HUBBARD,
d/b/a RODNEY HUBBARD & SON LOGGING,

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CERTIFICATE OF SERVICE

I, WILLIAM S. WINFREY, II, of counsel for the Respondents/Defendants, Ellen Friend and Helen Austin Ryan, heirs of Otella Austin, Rodney Hubbard, d/b/a Rodney Hubbard & Son Logging, do hereby certify that a true and correct copy of the foregoing *Answer to Amended Petition and Complaint* has this day been electronically filed with the Clerk of Court, as well as mailed, postage prepaid, to the following counsel and parties of record:

Harold B. Wolfe, III, Esquire
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Respondent/Defendant

This the 18th day of April, 2016.

/s/ William S. Winfrey, II
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